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SUBJECT: NEPAL: HUMAN RIGHTS IN THE CONTEXT OF THE
INSURGENCY

REF: A. KATHMANDU 0463

- 1B. KATHMANDU 0141
- 1C. KATHMANDU 0432
- 1D. KATHMANDU 0458

Classified By: AMB. MICHAEL E. MALINOWSKI. REASON: 1.5 (B,D).

SUMMARY

11. (C) The Maoist insurgency poses special challenges for the Government of Nepal's (GON) efforts to improve its human rights performance. At the same time, our ability to make objective, fact-based assessments of the GON's performance is hindered by a number of complicating factors, including the inaccessibility of many sites of purported violations, the absence of impartial observers in civil society or the media to document allegations, an institutional culture of non-transparency, the lack of GON capacity to conduct adequate investigations, and a weak judicial system. The painful scrutiny donors and members of civil society have directed at the GON's performance may force improved implementation of long-standing--and long-ignored--human rights commitments. While the end of the ceasefire has brought a number of troubling allegations against the security forces, it has also brought some encouraging indications of an evolving institutional responsiveness to the need for greater accountability. Although there obviously is substantial room for improvement, we believe that as long as we continue to observe some signs of progress, we should remain engaged with the GON and the security forces as a way to ensure more sustained improvement. Our human rights messages must be reinforced through continued U.S.-funded training in civil affairs and human rights for the military, as well as new U.S. support to strengthen Nepal's legal institutions and to build capacity within the NHRC. There is no indication that the Maoists are doing anything to improve their own human rights record or to mitigate the debilitating effects that their operations and campaign of terror have on average Nepalis. End summary.

GREATER SCRUTINY, MORE REPORTS OF VIOLATIONS

12. (SBU) Over the past few years of the Maoist insurgency, Nepali security forces in general and the Royal Nepal Army (RNA) in particular have faced growing international and domestic criticism for human rights violations. The chorus of complaints has grown in volume since the Maoists unilaterally ended a seven-month ceasefire in August and resumed hostilities against the Government of Nepal (GON). For independent observers, it is often difficult to determine the validity of many of the allegations against the security forces for a number of reasons, including the inaccessibility of many sites of purported violations, the absence of impartial and competent institutions in civil society or the media to document allegations, and a widely accepted culture of non-transparency. The current emotionally charged, politically polarized climate, which fosters a popular predisposition to believe the worst about the GON, further clouds the often incomplete picture we receive. Nepal's free--and often irresponsible press--also complicates the problem. For many of the same reasons, it is equally difficult to judge whether more violations actually are taking place, or whether civil society and the media (and possibly the Maoists themselves) simply have become more adept at publicizing such incidents.

13. (SBU) These complications aside, it remains obvious that the number of casualties has escalated dramatically since the RNA entered the fight on November 26, 2001. By the second week of November 2001, for example, fewer than two thousand people had been killed in more than five and a half years of the insurgency. After just one year of RNA involvement, the toll had more than tripled. Current statistics indicate that eighty percent of all people killed in all the eight years of

conflict have died in just the last 28 months since the RNA's mobilization. Of the 8800 Nepalis who have died since February 1996, more than 65 percent were identified as suspected Maoists. The casualty tolls for civilians and police (including Armed Police Force) are at near parity (about 15 percent each). The RNA accounts for less than 5 percent of the casualties.

14. (C) The RNA, which is leading the counterinsurgency effort as head of the newly established Unified Command, has found itself catching most of the criticism for violations. Some of the scrutiny may be politically motivated; the Army is closely associated with the King, whom party leaders have accused of overstepping his constitutional boundaries. Moreover, given the general absence of civilian GON initiatives to address the insurgency, e.g., restoring disrupted government services in Maoist-affected areas, RNA efforts to fill the gaps have earned it often unjustified criticism for trying to "militarize" the government or otherwise usurp civilian functions. The RNA's historic association with the Palace has, moreover, helped foster a culture of non-transparency and aloofness within the institution. Unused to criticism or public scrutiny, the RNA never before found it necessary to cultivate good relations with civil society, the media or with political parties. Its officer corps, their loyalty to each other and the King reinforced by interlocking caste and family relationships, may lack a clear understanding of the harsh conditions and extreme poverty under which most Nepalis, including members of the Maoist movement, must live.

15. (C) The RNA faces indisputable challenges in attempting to address the insurgency. RNA advocates note that the Army was thrust unprepared overnight into the middle of a violent insurgency when the Maoists attacked soldiers in their barracks after breaking the first ceasefire in 2001. (Other observers contend that, after five and a half years of steadily worsening violence, the RNA should have anticipated being deployed. It was successive democratically elected governments, however, that steadfastly refused to deploy the RNA in a counter-insurgency role for fear of somehow strengthening the Army and the Palace.) Before late 2001, the RNA was a small, parade-ground military with some experience in international peacekeeping, untrained, unstaffed, and unequipped to mount a full-scale counterinsurgency effort. It now must face a foe who employs savage, take-no-prisoner tactics and who is virtually indistinguishable from the rest of the population. The battle takes place across some of the most rugged, uncompromising terrain in the world, posing special difficulties for the RNA, with its minimal air assets, in providing adequate security. Finally, the RNA has experienced unprecedented growth over a short period of time, swelling its enlisted ranks by more than 40 percent over the past 28 months since its deployment. Many of the new recruits have had inadequate training in a whole array of military skills and lore, including the Law of Armed Conflict and human rights. Officers and non-commissioned officers, moreover, are not being trained fast enough to provide necessary command and control.

A WEAK INSTITUTIONAL ENVIRONMENT

16. (C) While many critics accuse the security forces of deficiencies in applying human rights standards, the same charges may be leveled against the GON, the National Human Rights Commission (NHRC), the judiciary, and some elements of civil society. Many of these problems reflect long-standing institutional weaknesses unrelated to (but certainly exacerbated by) the insurgency. For example, while the GON has signed a number of international human rights agreements, such as the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), efforts to implement those agreements remain inconsistent and incomplete. Although the GON signed CEDAW 13 years ago, a local NGO has identified more than 100 different pieces of existing legislation that discriminate against women. When the NHRC was formed in 2000, party leaders saw it as a vehicle to dispense political patronage, rather than to monitor human rights, and duly appointed a quota of members on the basis of partisan loyalty, rather than professional competence. The result, while predictable, has been especially damaging to the development of national capacity in this important field. Commission members' personal and partisan enmities routinely subverted constructive cooperation and inappropriately politicized investigations into cases. Unfortunately, the bitter partisanship that tainted NHRC operations was replicated in a plethora of human rights NGOs aligned with particular parties, further politicizing monitoring and reporting. Inaccurate and irresponsible journalism, in which rumor is often misrepresented as fact, compounds the problem.

17. (C) The right to a fair trial is undermined by an

inefficient judicial system. In 2003 district courts in Nepal reported a combined backlog of more than 32,000 cases, while the Supreme Court's backlog totaled more than 16,000. Of the hundreds of individuals detained as suspected Maoists under special anti-terror legislation, only 24 have been brought to trial. Emborffs' queries to three different GON agencies (the Attorney General's Office, the Supreme Court, and the Ministry of Law and Justice) about the specific rights afforded to detainees under Nepali law elicited three separate and conflicting responses, highlighting the lack of clear guidelines and enforcement mechanisms in the domestic legal framework.

GROUND REALITIES HARD TO UNEARTH

18. (C) In many of the areas where violations are alleged to have taken place, there are no independent sources, whether from the press, civil society, or even civilian government, to substantiate reports. In this environment, separating fact from rumor, speculation, and politically motivated misrepresentations often can be nearly impossible. Nonetheless, the Ministry of Defense's own press releases, which convey the daily "killed in action" statistics, raise some questions. On a typical day, the list reports a number of incidents nationwide, the majority of which entail one or two "Maoists" being killed in disparate regions across the country, often with no accompanying report of an engagement, of security forces killed or wounded, or of other Maoists surrendering, being taken prisoner, or being wounded in the same place. For example, MOD information from February 6 reports 1 Maoist killed in Panchthar District in the northeast of the country; 1 Maoist killed in Banke District in the far southwest of the country; 1 Maoist killed in Dhading District (near Kathmandu); 1 Maoist killed in Kaski District in the northern-central part of the country; 1 Maoist killed in Udaypur District in the southeast; 2 Maoists killed in Bardia District in the southwest; and 7 Maoists killed in Jumla District in the northwest. Information regarding the circumstances under which these people were apprehended and killed and/or how it was determined they were Maoists is generally not forthcoming. In this situation, we are unlikely ever to know what percentage of the 5,862 "Maoists" reported killed in the conflict were actual hard-core members of the movement.

SOME CASES UNDER INVESTIGATION

19. (C) Some recent allegations from credible sources suggest that the deaths of at least some of the "Maoists" reported killed in MOD dispatches can be attributed to a lack of adequate discipline and training among new recruits, flimsy intelligence, or more rarely, personal vendettas. Poor training certainly contributed to the December 12 death of 20-year-old Suresh Baral in Pokhara, who was killed when civilian police manning checkpoints at opposite ends of a street mistook one another for Maoists and began shooting at each other. The GON has promised compensation to the Baral family. Similarly, on February 17 RNA soldiers shot and killed Biraj Gurung, Sunil Gurung, and Tirki Praja as they were collecting funds to support a local temple in Kabilash, Chitwan. (Note: This practice is common around the time of the Shivaratri Festival, which was being celebrated at the time. End note.) The RNA later acknowledged the three were mistaken for Maoist extortionists and has promised compensation to the victims' families.

110. (C) Hamfisted "intelligence" gathering techniques may account for other cases of mistaken identity. Captured Maoists are sometimes taken to checkpoints and village bazaars to point out their colleagues to the security forces; fear of retaliation creates an obvious incentive for these "informants" to tag innocent villagers as Maoists. Other methods reportedly used by the security forces to identify Maoists likely also contributes to the death toll. A Nepali citizen who works for a UN agency told us that during a recent visit to his village in Gulmi District relatives told him that members of the security forces disguised as Maoists come into villages and strike up conversations with local residents in an effort to identify Maoist sympathizers. The hapless villagers, according to this source, seeing an armed stranger in Maoist garb, will generally feign Maoist sympathy, whereupon they are apprehended. Some of these "Maoists" are subsequently "shot while trying to escape," the source suggested. Poloff has heard other such allegations from local NGO and media sources. The NHRC currently is investigating reports of a similar incident in Bara District where Kishori Patel Kurmi and Suresh Raut Patel were shot and killed by the RNA as suspected Maoists on February 12. According to one of the NHRC field investigators, villagers claim that armed RNA soldiers in plainclothes approached the two men, who had no known Maoist affiliation. The two men, alarmed at the sight of unfamiliar plainclothes men with

guns, ran away, whereupon the soldiers shot and killed them.

11. (SBU) A few allegations, if true, can be attributed neither to poor training or bad intelligence. Instead, the lack of institutional response to earlier reports of violations may contribute to a perception of impunity that encourages criminal behavior in some quarters. A local NGO claimed that RNA soldiers summarily executed 17-year-old Subhadra Chaulagain and 18-year-old Reena Rasaili after dragging them out of their homes in Pokhari Chauri, Kavre District, about midnight on February 13. According to the NGO's report, Chaulagain offered to surrender before she was taken outside and shot several times, while Rasaili was kept in a cowshed with about five or six soldiers for five hours. Her naked body, with three gunshot wounds, was found by her family a short distance from the cowshed early the following morning. On February 17 members of the security forces went to the home of Rasaili's aunt, who had been visiting the night Reena was killed and witnessed her being taken away by the soldiers, looking for her. Finding the aunt away from home, the soldiers reportedly took her 14-year-old daughter, Maina Sunwar, into custody, telling her father the girl would be released when her mother turned herself in to "Lamidanda Army Camp." (Note: Lamidanda is near the Panchkhal Peacekeeping Training Center in Kavre District. End note.) The mother subsequently reported to Panchkhal only to be told that her daughter was not there. Local residents reportedly told the mother, however, that they saw two girls being taken in a truck to the base. RNA Spokesman Colonel Dipak Gurung acknowledged the RNA killed the two girls, whom he described as Maoists, but said it was investigating the allegations of rape and abduction. (Note: The Ambassador hand delivered a letter to Chief of Army Staff General Pyar Jung Thapa on March 3 asking for more information on the cases. To date, no reply has been received. End note.)

EVOLVING ATTITUDE

12. (C) In our continued dialogue with RNA officers, the Embassy regularly raises the importance of inculcating respect for human rights, and is just as regularly assured that all efforts are being undertaken to do so. Since the establishment of the RNA's human rights cell in July 2002, we can identify a slowly evolving awareness of the need to investigate, prosecute and even convict abusers. For example, the first case the Embassy raised with the human rights cell--the March 15, 2001 killing of Kancha Dangol in Kathmandu--resulted in no more than a three-month sentence for two low-ranking enlisted personnel for dereliction of duty. (This despite photographic evidence showing the corpse of Dangol, whom the RNA maintained was "shot while trying to escape," with a gun shot wound in his temple.) A captain accused of rape in a controversial April 2001 incident was held back from promotion for a year after the victims, probably under pressure from the captain, who remained at his post (near the girls' home) during the course of the investigation, withdrew charges. Eventually, however, the RNA's human rights cell won a few convictions, such as the seven-year sentence for a soldier convicted of an extra-judicial killing in January 2003 (Ref B). More recently, two cases the Embassy has brought before the cell--the December 6 killings of three civilians in Khotang District and the December 15 killing of a 15-year-old girl in Kavre District (Ref B) have resulted in courts-martial. In a landmark decision, on March 11 the RNA announced it would court-martial a major--the highest-ranking RNA officer yet to face charges for gross violations of human rights--implicated in the alleged extra-judicial killings of 19 suspected Maoists in Doramba, Ramechhap District (Ref A).

13. (C) Greater scrutiny of Nepal's human rights performance by both the international community and domestic audiences is making the GON realize it must improve its ad hoc implementation of human rights standards and agreements. Faced with a possible UN resolution on its human rights record, the GON plans soon to announce a detailed commitment to fulfil its human rights obligations--including instructions to the security forces to respect the right to habeas corpus (Ref C). (Note: Human rights groups and legal authorities assert that the security forces routinely ignore writs of habeas corpus. Amnesty International lists 173 individuals as having "disappeared" in GON custody since the end of the ceasefire in August. End note.) Some European diplomats here have suggested that fears among the military leadership that reports of RNA violations might damage the Army's competitiveness for future UN Peacekeeping missions may also be a factor in the RNA's evolving attitude toward human rights.

14. (C) While pressure and scrutiny from the international community and Nepali civil society may be helping change GON attitudes and practices toward human rights, the Maoists, regrettably, have demonstrated no such improvement. Instead, they continue to murder, torture, rob and intimidate, and

have apparently adopted a fresh outrage--the abduction and conscription of children--as a new policy (Ref D). Our GON interlocutors complain that their critics in the media, civil society, INGOs and certain European donors focus on allegations of GON abuses while barely commenting on the Maoists' well-documented depredations.

COMMENT

15. (C) That the security forces face formidable challenges in trying to quell the insurgency is undeniable. That the Maoists are ruthless and vicious foes is undeniable. That Nepal lacks the legal and institutional framework to ensure more systematic implementation of human rights standards is undeniable. But that the security forces can and must do better to inculcate respect for human rights throughout their ranks is also undeniable. While we believe that U.S. engagement with the military has helped increase this awareness, more must be done. While we believe abuses are the exception, rather than the rule, heavy-handed tactics obviously alienate and intimidate the general public, rather than win their hearts and minds. We are encouraged that the GON and the security forces are beginning to demonstrate accountability at higher levels, as in the Ramechhap incident. We will continue to emphasize the importance of human rights in our engagement with the civilian GON, the Palace, and the security forces. At the same time, these messages must be reinforced through continued U.S.-funded training in civil affairs and human rights for the military, as well as new U.S. support to strengthen Nepal's legal institutions and to build capacity within the NHRC. We also need to focus more international attention on the terrorist tactics and their widespread policy of human rights abuse.

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